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LOUISIANA STATE BAR EXAMINATION

JULY 2017

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**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2017**

QUESTION 1 — 30 POINTS

The following facts apply to Questions 1.1. to 1.4.

Acme Corporation is a properly formed Louisiana corporation. Its articles of incorporation provide in part that “This Corporation shall have authority to issue an aggregate of 4,000 shares of no par value common stock.” To date, 2,000 shares of stock have already been issued by Acme. The articles do not address bylaws one way or the other.

Feeling that the corporation required considerably more capital, the board of directors met last month and unanimously adopted a single bylaw, stating “This Corporation shall have authority to issue an aggregate of 5,000 shares of no par value common stock.”

Last week at a properly convened meeting, the shareholders disagreed with the board’s action and thus unanimously amended the single bylaw to read “This Corporation shall have authority to issue an aggregate of 2,000 shares of no par value common stock; the board of directors has no authority to amend this bylaw.” The shareholders also unanimously signed (and filed with Acme) a shareholders’ agreement providing the same thing.

No other corporate bylaws have ever been adopted. No attempt has yet been made to issue any further shares of stock.

- 1.1. Did the board of directors have the authority to adopt its single bylaw? Discuss. (3 points)**
- 1.2. Did the shareholders of Acme have the authority to adopt their amendment to the single bylaw adopted by the board of directors of Acme? Discuss. (4 points)**
- 1.3. After the passage of the single bylaw by the board of directors and its subsequent amendment by the shareholders, how many further shares of stock in the aggregate does the board now have the power to issue? Discuss. (5 points)**
- 1.4. What other actions can the shareholders of Acme take to ensure that Acme cannot issue any further shares of stock and to bind future shareholders to such a limitation? For each action, also describe any limitations as to the effectiveness of such action. Discuss. (8 points)**

TEST CONTINUES ON NEXT PAGE

The following facts apply to Question 1.5.

Allison, Bob, Cathy, Donna and Eric are the directors of ExCom, Inc., a Louisiana corporation. ExCom has five shareholders:

Shareholder	# of Shares
Allison	200
Cathy	200
Donna	50
Eric	300
Fred	450
TOTAL	1,200

Eric is the president of ExCom. Cathy is the vice-president and secretary of ExCom. Cathy and Eric are siblings and have always had a very close relationship with each other. One month ago, Donna and Eric got married to each other.

Eric wants to sell an office building that he owns to ExCom for ExCom to use as its new headquarters for a price of \$1 million (Eric thinks the building would be perfect for ExCom’s needs and, in any event, he wants the money to buy a house for him and Donna to live in). This price is \$200,000 more than the office building’s value reported in a private appraisal six months ago that Eric personally ordered; however, Eric still considers it a fair deal based on its location, premium finishes and layout. Eric has not yet revealed the appraisal to anyone else.

1.5. What steps might Eric take to ensure that neither ExCom nor a shareholder may enjoin the sale or be entitled to damages, and is he likely to succeed? Discuss. (10 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2017**

QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)

Short Answer Questions. Please answer each question and provide a brief explanation for your answer.

- 2.1. In an action against a corporate director for conduct in his official capacity as a director, describe the differences between indemnity and advance of expenses.
- 2.2. To form a corporation under Louisiana law, what document or documents must be filed, and where must such document or documents be filed?
- 2.3. What qualifications must a director have to be considered a “qualified director”?
- 2.4. What is shareholder oppression, and what remedies are available to a shareholder who is subject to shareholder oppression?
- 2.5. Identify at least two activities that could cause a limited partner in a partnership in commendam to be held personally liable as a general partner.
- 2.6. Explain the legal duty owed by an officer of a corporation.
- 2.7. What is a unanimous governance agreement, and how is it formed?
- 2.8. What are the differences between a direct action and a derivative action by a shareholder against the directors of a corporation?
- 2.9. What records of a corporation may a shareholder inspect? What are the requirements for a shareholder to inspect the records of a corporation?
- 2.10. What are the requirements for an instrument to be considered negotiable?

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2017**

QUESTION 3 — 20 POINTS (FIVE POINTS EACH SUBPART)

Elizabeth has developed a formula for a hybrid motor fuel that she believes will perform more efficiently, produce no harmful emissions and cost less than one third of the current per gallon cost of gasoline-based motor fuels. Elizabeth has two friends, Julie and Nadine, who are interested in investing in a business with Elizabeth to produce and sell this new fuel. Each of the three would invest \$100,000, for a total of \$300,000. There may be a substantial risk of loss in this new business, and the investors do not want to risk their family fortunes in it. In setting up the business, the investors have four stated objectives they wish to accomplish:

- (1) To limit the liability of each investor to the \$100,000 that each contributed;
- (2) To give each investor assurance of an equal voice in the management and operation of the business without exposing the investor to personal liability beyond the amount of the investment;
- (3) To ensure that the profit and loss resulting from the business can be reported as income or taken as a deduction directly on the individual federal income tax returns of the investors without being taxed first to the entity; and
- (4) To minimize the legal formalities necessary to create and operate the company.

The investors wish to consider the following two forms of business entities: (i) limited liability company; and (ii) partnership in commendam.

- 3.1. What steps must be taken to form a Louisiana limited liability company?**
- 3.2. What steps must be taken to form a Louisiana partnership in commendam?**
- 3.3. What are the relative advantages and disadvantages of each entity with respect to the investors' stated objectives?**
- 3.4. If the investors decide to form a partnership in commendam, how should it be structured to best satisfy their stated objectives?**

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2017**

QUESTION 4 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Corporations (3), negotiable instruments (6), partnership (1)

[End of Question 4]

END OF BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS TEST

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2017**

QUESTION 1 — 40 POINTS

After Amy and Brian had dated for years, they decided to buy a house together for \$200,000. Due to Brian's bad credit at the time, Amy supplied the entire \$20,000 down-payment, obtained a 30-year mortgage for the remaining \$180,000, and acquired the house in her name alone. A week later, Amy and Brian married each other in a properly officiated ceremony and moved into the house together. Over the next few months, Brian worked on the weekends to renovate the house by himself; if Amy and Brian had had to pay someone else to do this work, the labor cost would have been \$60,000. As part of the renovations, Brian installed \$40,000 worth of materials, which he paid for with money the couple received as a wedding gift. Upon the completion of these renovations, the house was worth \$300,000. Brian has made all the mortgage payments since inception and to date; he has paid \$200,000 (\$50,000 in principal and \$150,000 in interest), all from his earnings during the marriage. The house is now worth \$400,000.

About a year after they married, Brian had a brief affair but ended it shortly after it began. Brian confessed to Amy and apologized profusely, and Amy forgave Brian and resumed their marital relationship. About two years later, Amy had an affair with a co-worker, Charles. The affair lasted for about six months, but Amy ended it when she became pregnant. Amy delivered a boy named Sam. Amy never told Brian about the affair, and she has never performed DNA tests on Sam to determine whether Brian or Charles is Sam's father.

Amy stopped working after Sam was born, and Brian continued to support the family. Two years later, Amy and Brian had a second son together. Amy spent her days taking care of the boys and the home. She was the one who took the boys to their doctors' appointments, picked them up and dropped them off at school, and got them to their swim lessons and other activities. Brian was an active father too, coaching each boy's little league baseball teams and teaching both boys how to play soccer.

On Sam's tenth birthday six months ago, Amy, Brian and Sam ran into Charles, who introduced them to his nine-year old son. Brian and Charles were both shocked by how much Sam looked like Charles' nine-year old. Charles contacted Amy the next week and demanded a DNA test to determine whether he was Sam's father. Amy and Brian acquiesced to Charles' demand, and DNA tests confirmed that Charles, not Brian, was Sam's biological father.

Brian was completely devastated by this news about Sam and moved out of the house three months ago. Amy initially tried to resume the relationship and even had sex with Brian one night a month ago. But at this point, Amy has likewise recognized that the marriage cannot be saved.

TEST CONTINUES ON NEXT PAGE

Please answer the following eight subquestions. The subquestions are not weighted equally in Question 1. Explain each answer; an answer without an explanation will receive no credit.

- 1.1. What are each spouse's options for divorce? Are there any potential time delays and complications associated with each option? Discuss. (8 points)**
- 1.2. If either spouse files a divorce action, is Amy entitled to interim spousal support? Discuss. (3 points)**
- 1.3. If either spouse files a divorce action, is Amy entitled to final spousal support? Discuss. (3 points)**
- 1.4. Should the home be classified as separate property or instead as community property? Discuss. (5 points)**
- 1.5. What credit, if any, is Brian entitled to if the court awards the home to Amy as part of a divorce proceeding? Discuss. (7 points)**
- 1.6. If Brian now files an action to disavow paternity of Sam, will his action be timely? Discuss. (3 points)**
- 1.7. If Charles now files an action to establish paternity over Sam, will his action be timely? Discuss. (3 points)**
- 1.8. If a divorce proceeding is filed and Amy and Brian cannot agree on custody for the two boys and Brian does not disavow Sam, to whom should the court initially award custody of the two boys? Discuss. (8 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2017**

QUESTION 2 — 40 POINTS

Sallie owned a four-acre square tract of land, which borders a public highway on the north, a river on the south, and properties of other landowners on the east and west. In 2003, on the northwest one acre, Sallie built a store, with a concrete parking lot to the east of the building. In 2006, Sallie then sold that one-acre portion with its building and parking lot to Drugstore. As part of the sale, Drugstore established a non-exclusive servitude of passage dedicated to the remaining three acres and conveyed to Sallie, as well as her heirs and assigns, a non-exclusive right of way on a strip of ground measuring 30 feet in width along the eastern edge of the one-acre portion as depicted on the plat attached to the act of sale, which was duly recorded in the local parish conveyance records.

Promptly after this sale, Sallie built on the northeast one-acre portion of the three remaining acres a strip mall and a concrete parking lot between the strip mall and the highway. The strip mall runs along the entire southern end of this same one-acre portion from the eastern boundary of her property to the new property boundary with Drugstore's one-acre lot. Sallie leased stores in the strip mall to a variety of companies. Sallie and all of the mall tenants had direct access to the public highway, so none of them or their customers have ever used the 30-foot passageway on the eastern edge of Drugstore's property.

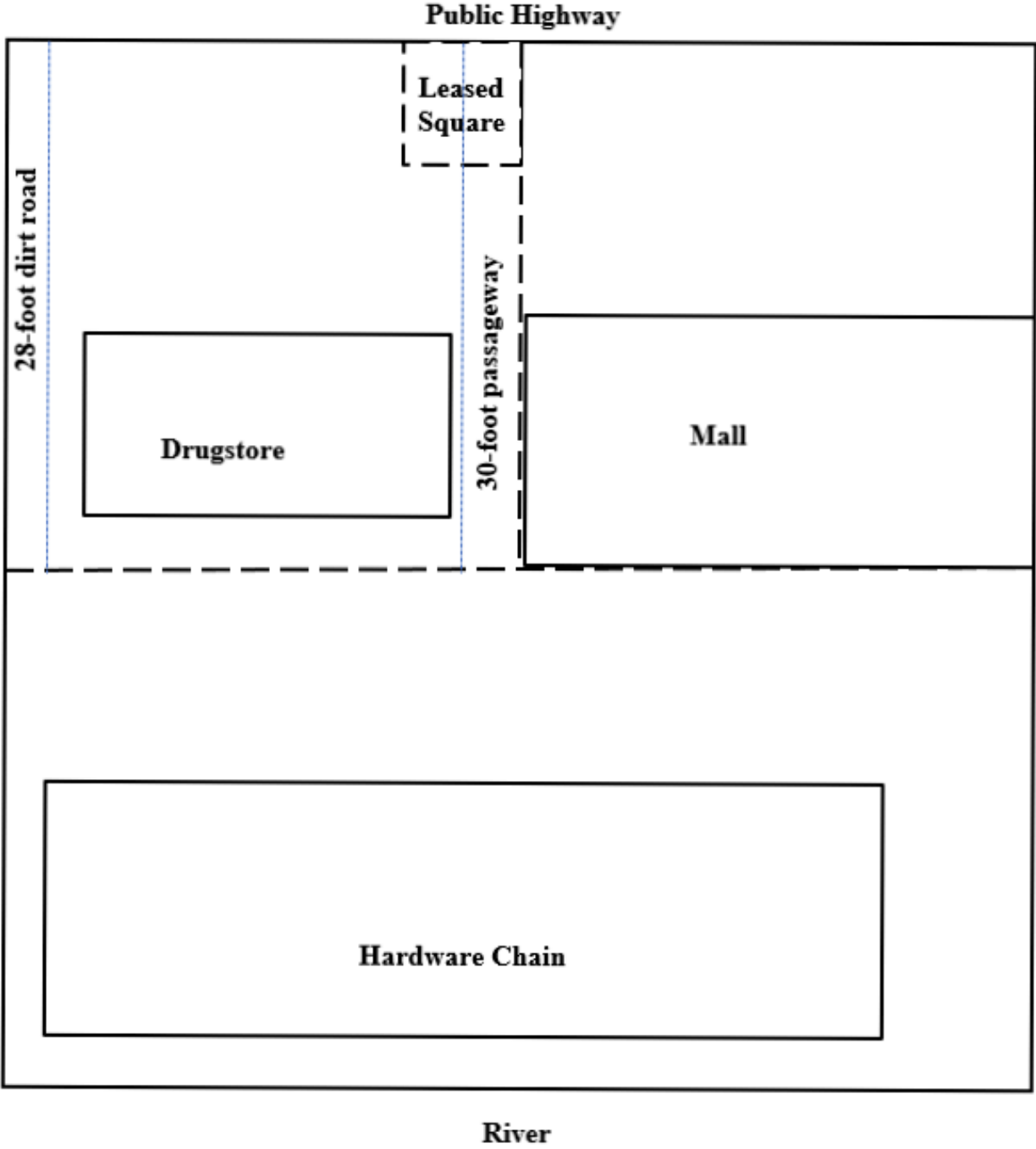
In 2014, Sallie sold the southern two acres to Hardware Chain, together with "all servitudes and rights of ways." Immediately after the sale, Hardware Chain constructed a large store and parking lot on its two acres. Hardware Chain immediately began to use the 30-foot passageway on the east side of Drugstore's property, during both construction and operation of its store. Hardware Chain's customers likewise accessed Hardware Chain's store from the public highway through this same 30-foot passageway. This use of the passageway by Hardware Chain's customers has angered Drugstore's management because Hardware Chain's customers often traversed the passageway at high rates of speed and some occasionally collided into cars of Drugstore's customers.

In 2016, Drugstore entered into a five-year lease with Mr. Sno for a 50-foot by 50-foot square area at the northeast corner of its property. The lease expressly requires Drugstore's consent to Mr. Sno to construct any building or other structure on the leased premises. With Drugstore's consent, Mr. Sno constructed a snowball stand immediately adjacent to the public highway and in the path of the 30-foot passageway. The snowball stand has a concrete slab, four walls, a ceiling, plumbing and electricity. After the snowball stand was built, Hardware Chain customers started to use a 28-foot dirt road on the west side of Drugstore's building in order to access Hardware Chain's store and parking lot. Although Drugstore authorized Mr. Sno to build the snowball stand, the lease did not address ownership of the snowball stand at lease termination.

Mr. Sno also constructed a walk-up hamburger stand on the leased property. The hamburger stand is approximately half the size of the snowball stand, but likewise is constructed on a concrete slab with four walls, a ceiling, plumbing and electricity. Mr. Sno did not seek or obtain Drugstore's consent to build the hamburger stand.

On the next page is a sketch of the four-acre area; please note that the sketch is not to exact scale.

TEST CONTINUES ON NEXT PAGE



TEST CONTINUES ON NEXT PAGE

Please answer the following eight subquestions (five points each). Explain each answer; an answer without an explanation will receive no credit.

- 2.1. Is the servitude granted by Drugstore to Sallie for the 30-foot passageway a predial or instead a personal servitude? Discuss.**
- 2.2. What rights, if any, does Hardware Chain have to use Drugstore's property to access the public highway? Discuss.**
- 2.3. What rights, if any, does Hardware Chain have in response to the construction of the snowball stand on the passageway along the eastern side of Drugstore's one-acre parcel? Discuss.**
- 2.4. Assume solely for this question 2.4 that Drugstore wants to relocate the 30-foot passageway on the east side of its property to the 28-foot dirt road on the west side of its property. What rights, if any, might it have to do so? Discuss.**
- 2.5. What are the consequences, if any, of Sallie's failure to use the passageway for ten years? Discuss.**
- 2.6. Who owns the snowball stand and the hamburger stand, and how should each be classified (as either movable or immovable property)? Discuss.**
- 2.7. What are Mr. Sno's and Drugstore's rights and obligations with regard to the snowball stand at the expiration of the lease? Discuss.**
- 2.8. What are Mr. Sno's and Drugstore's rights and obligations with regard to the hamburger stand at expiration of the lease? Discuss.**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2017**

QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Acquisitive prescription (1), classification of things (2), conflict of laws (1), co-ownership (1), marriage (1), matrimonial regimes (1), personal servitudes of usufruct (3)

[End of Question 3]

END OF CIVIL CODE I TEST

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2017**

QUESTION 1 — 50 POINTS

PART A (INTESTATE SUCCESSION)

Peter died intestate on February 1, 2017. Peter and his wife, Wendy, were domiciled in Louisiana for their entire marriage. They never executed a matrimonial agreement. Peter was survived by their two children: Doug and Felicia. Peter was also survived by his mother, Gran, and his only sibling, Rory.

Peter had one other child, Barbara, with another woman before his marriage to Wendy. Barbara, who died in 2015, was survived by her sons, Harry and Kenny. Her last will and testament, which was closed by a judgment of possession in 2015, left her entire estate in equal parts to Harry, Kenny and Mike, who is her husband's son from a previous marriage. Barbara had raised Mike as her own child but never formally adopted him.

On February 10, 2017, Wendy was qualified as Peter's succession representative. Thereafter, Wendy discovered among Peter's papers a letter from Doug to Peter, dated December 26, 2016. The letter was written and signed by Doug and reads in part as follows: "I want nothing to do with you ever again. I don't even want your money. Therefore, I expressly renounce any inheritance from you."

At the time of his death, Peter owned the following property in Louisiana:

- Community Property: an undivided one-half interest in a home (the "Family Home") that he and Wendy purchased during their marriage.
- Separate Property: a gold watch that Peter inherited from his father.
- Separate Property: An original painting by Melissa Brampton, a well-known abstract artist, that Rory gave to Peter as a birthday present.
- Separate Property: Blackacre, a tract of land that Gran had donated to Peter.

1.1. Upon Peter's death, who owned interests in the Family Home and in what proportions? Discuss. (10 points)

1.2. What rights, if any, does Wendy have in Blackacre? Discuss. (3 points)

FOR QUESTIONS 1.3. AND 1.4. ONLY, ASSUME THAT PETER NEVER FATHERED ANY CHILDREN.

1.3. Who inherits Peter's gold watch? Discuss. (3 points)

1.4. Who inherits Blackacre from Peter? Discuss. (3 points)

TEST CONTINUES ON NEXT PAGE

PART B (TESTATE SUCCESSION)

For Part B of Question 1, assume that the same facts apply as Part A of Question 1, except that none of Peter's heirs is a forced heir and that Peter died with a valid last will and testament, the relevant provisions of which read as follows:

1. I leave my interest in our family home to Wendy.
2. I leave my gold watch to Doug. He is to take good care of it for his lifetime and at his death leave it to Harry.
3. Because it is our old family homestead, I ask that my mother, Gran, decide who should inherit my interest in Blackacre.
4. I leave my Brampton painting to my daughter, Felicia.
5. I leave the residue of my estate one-third to Doug, one-third to Felicia, and one-ninth each to Harry, Kenny, and Mike, subject to Wendy's usufruct for life.
6. I name Wendy my independent executrix.

1.5. Which disposition or dispositions, if any, of the testament are invalid? Discuss. (8 points)

FOR QUESTIONS 1.6. TO 1.8. ONLY, ASSUME THE FOLLOWING ADDITIONAL FACT:

On December 25, 2016, Peter was visited by Susan, an aspiring artist. Susan admired Peter's Brampton painting, and Peter, telling her that it should be owned by someone who would appreciate it, took the painting off the wall and gave it to her.

1.6. Can Felicia successfully require Susan to return the Brampton painting to Peter's succession, so that ownership of the painting can pass via his testament? Discuss. (8 points)

FOR QUESTIONS 1.7. AND 1.8. ONLY, ALSO ASSUME THE FOLLOWING YET ADDITIONAL FACTS:

On January 5, 2017, Peter visited Susan to look at the Brampton painting. Seeing that she had hung it upside down, Peter quipped that she knew nothing about fine art. Susan became enraged and, grabbing a large kitchen knife, stabbed Peter in the leg. She told him that if he ever mentioned the Brampton painting again, she would slit his throat.

1.7. On what basis, if any, might Wendy have the donation of the Brampton painting to Susan revoked? If so, what prescriptive period applies to such action? Discuss. (9 points)

FOR QUESTION 1.8. ONLY, ALSO ASSUME THE FOLLOWING YET ADDITIONAL FACTS:

The next day (January 6), Susan sold the painting to Acme Art Gallery for \$100,000, its fair market value at the time. Following a January 15, 2017 triumphal exhibition of Melissa Brampton's abstract paintings at the New Orleans Museum of Art, the fair market value of the painting Susan sold to Acme Art Gallery doubled in value to \$200,000, which remains its current value.

1.8. If Wendy is successful in revoking Peter's donation of the Brampton painting to Susan, what must Susan return to Peter's succession? Discuss. (6 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2017**

QUESTION 2 — 30 POINTS

Oliver Jones died in 2015. He was a domiciliary of Louisiana. Oliver's wife died many years ago. Oliver and his wife had one child, Parker. Parker is not a forced heir of Oliver. Oliver had no other marriages or children.

Among Oliver's personal papers, his secretary found a document, entirely written in Oliver's hand, signed by him, and reading as follows:

“On this, my seventieth birthday, I make this last will and testament. The two loves of my life have been higher education and Parker, my only child. I am very concerned, however, with Parker's ability to manage his money. I know he has creditors, and I worry that he will squander his inheritance. Therefore, I am leaving half of my estate in a spendthrift trust with my brother, Bob, for Parker's benefit. The other half of the estate can go to such colleges and universities as my succession representative decides.

[signed] *Oliver Jones*

But I don't want my 1962 Ferrari 250 GTO to go in the trust or to the colleges and universities. It should go to the car museum in Maranello, Italy.”

At the time of Oliver's death, Parker had two creditors (the “Creditors”): National Bank (the “Bank”), which had a valid, final, but unsatisfied judgment for Parker's default on a loan from the Bank; and Parker's former wife, Wanda, who had a valid, final, but unsatisfied judgment against Parker for his failure to pay court-ordered alimony. The Creditors would like to execute their judgments against Parker's inheritance from Oliver.

- 2.1. The Creditors assert that the document found by Oliver's secretary is not a valid testament. Are they correct? Discuss. (8 points)**
- 2.2. The Creditors further assert that even if the writing constitutes a valid testament, the language in the document is insufficient to create a trust for the benefit of Parker. Are they correct? Discuss. (7 points)**
- 2.3. The Creditors further assert that even if a valid trust has been created by the writing, the language in the document is insufficient to bypass the general rule of the Louisiana Trust Code that a beneficiary may transfer or encumber his interest in a trust, unless the trust instrument provides to the contrary. Are they correct? Discuss. (4 points)**
- 2.4. (a) Does the Bank have a valid basis to seize trust assets to satisfy its judgment against Parker? Discuss. (2 points)**
(b) Does Wanda have a valid basis to seize trust assets to satisfy her judgment against Parker? Discuss. (2 points)
- 2.5. Is the bequest to the colleges and universities a valid bequest? Discuss. (4 points)**
- 2.6. May a court consider the bequest of the Ferrari to be part of Oliver's purported will, even though it appears after Oliver's signature? Discuss. (3 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE II
JULY 2017**

QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Conflict of laws (1), filiation (1), forced heirship (3), intestate distribution (1), Louisiana Trust Code (2), testate distribution (2)

[End of Question 3]

END OF CIVIL CODE II TEST

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2017**

QUESTION 1 — 30 POINTS TOTAL

PART A — 24 POINTS

Sara is a licensed structural engineer. She bought a commercial building from a seller who disclosed prior to the sale that the roof of the building leaked during heavy rain events, a common occurrence in Louisiana. Before the purchase, the seller delivered to Sara a professional engineer's report that discussed the design problems with the roof that may have caused the leaks, and the expensive remedies that would be required to repair the deficiencies. Sara, after conducting her own investigation, decided that the leaks could be repaired with much less expense, and purchased the property. After the purchase, Sara completed the repairs that she thought were needed to permanently repair the problem.

Several months later, Sara decided to sell the property. During the period of her ownership, there were no heavy rainstorms, and the roof did not leak. Sara sold the property to Betty. Prior to the sale, Sara did not disclose the engineer's report, but mentioned that she had made some repairs to the building during her period of ownership, without specifying the repairs, or discussing the building's history of roof leaks. Sara stated that she had no problems with the building during her period of ownership, and was unaware of any matters that would cause Betty any problems. The work that Sara did to the roof was still apparent, and was shown to Betty by Sara during her inspection, but there was no evidence of any leak damage, even upon careful inspection.

The act of sale to Betty contained a single waiver clause that specified that the sale was on an "as-is, where-is" basis, without any warranty against hidden defects, and without any right to rescind the sale for such defects. The clause, which was initialed by Betty with several other provisions, was not discussed at the sale, or brought to Betty's attention. Following the purchase, Betty did further renovations to the building. During the work, her contractors walked over the area of the roof repaired by Sara.

Six months after Betty's purchase, the roof leaked as it always had during a large rainstorm. This was Betty's first notice of the problem. Sara was not notified of the leak. Betty undertook some minor caulking and repairs, but the roof continued to leak during large rainstorms. The leaks were a material inconvenience to any occupant. After several additional attempted repairs by Betty, Betty filed suit against Sara to rescind the sale, and to recover additional damages, including attorney's fees. The suit was brought fourteen months after the date of Betty's purchase of the property.

Question 1.1. (14 points)

For the purposes of this Question 1.1., assume that prescription has not accrued on any claims of Betty.

- a. Did a redhibitory defect exist in the property sold to Betty? Discuss.**
- b. In selling the property to Betty, was Sara in good faith or bad faith under the law of sales, and how would Sara's good faith or bad faith affect the potential damages available to Betty under the laws with respect to redhibition? Discuss.**

Question 1.2. (6 points)

What defenses under the law of sales, if any, does Sara have in an action by Betty based on the condition of the house? Discuss.

Question 1.3. (4 points)

Does Betty have any basis to recover damages against Sara on the basis of fraud under the general law of obligations? Assume that any recovery on the basis of fraud has not prescribed. Discuss.

TEST CONTINUES ON NEXT PAGE

PART B — 6 POINTS

Dave sold a commercial property to Bob for \$10,000,000. The actual fair market value of the property at the time of the sale was \$25,000,000. The act of sale contained a waiver of any right to rescind the sale on the basis of lesion beyond moiety. This provision was mentioned at the sale, discussed in Dave's presence, and the clause containing the waiver was initialed by Dave and Bob, and the act of sale was signed by Dave and Bob in duly authentic form in the presence of Bob's counsel. Six months following the sale to Bob, Dave brought an action to rescind the sale on the basis of lesion beyond moiety. On the date of the filing of the petition, the property was worth \$40,000,000.

Question 1.4. (6 points)

Can Dave prevail in his action against Bob, and what rights should Bob have if Dave prevails? Discuss. Exclude from your answer any discussion of the allocation of fruits, revenues or related property expenses.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2017**

QUESTION 2 — 20 POINTS TOTAL

PART A — 5 POINTS

Vendor submitted an offer by email to Paul that contained an offer to sell a pump for a set price, on the terms set forth in the form of contract that was attached to the email. The offer specified that it would remain open and could be accepted within ten days, and that the offer could be accepted by returning a signed copy of the contract by either email or regular mail.

On the day following the making of the offer, Vendor sent Paul a letter by regular mail rescinding the offer. Paul, who received the letter from Vendor on the fourth day after the initial offer by email, sent Vendor an email on that day in which Paul accepted the offer to purchase. The email enclosed a signed copy of the contract in the form submitted by Vendor, without any modifications by Paul. Payment was promptly submitted in accordance with the terms in Vendor's form of contract but was not accepted by Vendor. When Vendor refused to deliver the pump the next week, Paul immediately filed suit demanding specific performance, and tendered the purchase price by deposit into the registry of court.

Question 2.1. (5 points)

Is Paul likely to be successful in his action to enforce the contract? Discuss.

PART B — 7 POINTS

Steve, as seller, and Patrick, as purchaser, executed an act of sale for a specific item of equipment, which contained a set price and a description of the equipment. The act of sale included an indemnity clause in favor of Steve. The parties never discussed nor negotiated the indemnity clause prior to signing the act of sale.

Following the execution of the contract, but prior to delivery, Patrick notified Steve that the indemnity clause was not enforceable under Louisiana law, that there was no severability clause in the contract which would uphold the balance of the contract in the event that one of the provisions was found unenforceable, and that the deletion of the indemnity clause renders the entire contract unenforceable. For these reasons, Patrick claimed that the contract was not binding on him. Patrick additionally alleged that the sale was not yet effective since delivery had not been made, and Patrick had not yet paid any purchase price.

Steve filed suit on the morning of this exam against Patrick to enforce the contract. The suit was filed on a timely basis. Assume that the indemnity clause was unenforceable under Louisiana law.

Question 2.2. (4 points)

Is Patrick likely to prevail in his defense that the indemnity clause rendered the entire contract unenforceable? Discuss.

Question 2.3. (3 points)

Is Patrick likely to prevail in his defense that the sale is not effective because delivery has not been made and the price has not been paid? Discuss.

TEST CONTINUES ON NEXT PAGE

PART C — 8 POINTS

Chris, the landlord, entered into a lease of a building with Thomas, the tenant. The lease, which was for a five-year term at a fixed rent, and which contained a complete and legally adequate description of the leased premises, was in writing and signed by Chris and Thomas but was not recorded. The lease required Thomas to keep the building in good condition. Three years after signing the lease with Thomas, Chris sold the property to Jeremy. Jeremy was provided with a copy of the lease with Thomas at closing. The sale documents contained no express provisions with respect to the lease. Jeremy accepted rent for several months from Thomas. The rent checks were sent to the address indicated in a letter from Jeremy to Thomas sent to Thomas shortly after the purchase. A few months after his purchase, Jeremy filed suit against Thomas to evict him from the property, based upon Thomas' failure to repair a leaking gutter on the building, and the failure of Thomas to record the lease.

Question 2.4. (8 points)

- a. Is Jeremy likely to be successful in his action to evict Thomas? Discuss.**
- b. If Jeremy is successful in his eviction action, does Thomas have a right to seek damages from Chris as a result of Jeremy's action? Discuss.**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2017**

QUESTION 3 — 30 POINTS TOTAL

PART A — 5 POINTS

In March of 2005, Brandon granted a mortgage on a tract of land in favor of Taylor to secure a \$100,000 note dated March 4, 2005. The mortgage, which was in proper authentic form, executed by Brandon and Taylor, contained a full and complete legally effective description of the land, and recited that it secured “Brandon’s \$100,000 note payable to the order of Taylor dated March 4, 2005,” but contained no statement regarding the maturity date of the note. The note was payable over a term of ten years in monthly interest only payments, with a final payment on March 4, 2015 of all outstanding principal and accrued but unpaid interest. The note contained no acceleration clause. No payments have ever been made on the note. The mortgage, which was recorded in March of 2005, has not been reinscribed.

Question 3.1. (5 points)

- a. Does the mortgage still maintain the effect of recordation against third persons as of the date of this exam? Discuss.**
- b. Does the mortgage remain enforceable by Taylor against Brandon? Discuss.**
- c. What rights of Taylor under the note, if any, have prescribed? Discuss.**

PART B — 25 POINTS

Tractors, Inc. (“Tractors”) purchased a lot of land in St. Martin Parish on which it intended to construct a tractor dealership. It entered into an agreement with GC, Inc. (“GC”) to construct the dealership building in January of 2017. No payment bond was obtained in connection with the agreement. On February 1, 2017, GC moved substantial quantities of building materials onto the property. On February 5, 2017, Tractors obtained a loan from Bank and executed a promissory note dated that day in the amount of \$500,000, payable in full in a single payment of principal and all accrued interest three years from the date of the note. Tractors executed a written mortgage in favor of Bank, signed by a duly authorized representative of Tractors, in which Tractors agreed that the mortgage would secure “all of the present and future indebtedness of Tractors, Inc. to Bank, up to a maximum secured limit of \$50,000,000.” The mortgage, which contained a full and complete legally effective description of the lot of land but did not mention that it included any buildings located on the lot, was recorded in the mortgage records of St. Martin Parish on February 10, 2017. It was not signed by Bank. A “no work affidavit” was not obtained in connection with Bank’s loan to Tractors.

On February 20, 2017, Creditor recorded a valid money judgment against Tractors in the mortgage records of St. Martin Parish. Bank obtained notice of the filing of the judgment on that date. Bank made a loan advance to Tractors in early March, 2017.

Later in the same month, Bank approached Tractors to discuss personal guaranties of its note from Tractors. Grant, an officer and a shareholder of Tractors, signed and delivered a written guaranty of the note. Debbie, the president and another shareholder, left a message on Bank president’s message service in which she stated that she guaranteed repayment of all of the debts of Tractors to Bank. She took no further action with respect to the guaranty. In early April of 2017, without notifying Grant or Debbie or obtaining either’s consent, Bank modified Tractor’s note by increasing the interest rate and accelerating the payment terms and maturity date. At the same time, it released another mortgage that Tractors had granted to Bank as security for the note on property in another parish. Grant’s guaranty contained no waiver of any legal rights or defenses.

TEST CONTINUES ON NEXT PAGE

Later in April of 2017, several statements of claim and privilege were filed in the mortgage records of St. Martin Parish with respect to the project, including those of a supplier of building materials to GC, and a subcontractor of GC. Neither the supplier nor the subcontractor contracted directly with Tractors, but only with GC. The statements of claim and privilege were in proper form with all required attachments, all required notices were given by the privilege filers, and each statement contained the same description of the lot contained in the mortgage. The project was completed in early May, and a duly executed notice of termination of work in proper form was filed on May 5, 2017.

Creditor seized the lot of land with the dealership building on June 1. There were several items of inventory on the lot at the time of Creditor's seizure. The privilege filers remain unpaid for their work on the project. Bank has not been paid. Bank and the privilege filers intervened in Creditor's suit, claiming a senior right to all foreclosure proceeds. Each privilege filer brought a separate claim against Tractors to collect the amounts respectively due to such person. Bank brought a separate collection action against Grant and Debbie to collect payment of the debts of Tractor to Bank.

Question 3.2. (5 points)

- a. Does Bank hold a valid mortgage on the lot of land? Discuss.
- b. Assume for this subpart (3.2.b.) that Bank holds a valid mortgage on the lot of land. Does Bank's mortgage include the building located on the land? Discuss.

Question 3.3. (5 points)

- a. Do the rights of the privilege filers prime Bank's mortgage? Discuss.
- b. Do the rights of the privilege filers prime the judicial mortgage of Creditor? Discuss.

Question 3.4. (4 points)

As of the date of this exam, does the supplier of materials to GC have a right to bring an action directly against Tractors? Does the subcontractor have a right to do so? Discuss.

Question 3.5. (2 points)

Does Bank have a right to collect the debts of Tractors from Debbie, based solely on the facts noted above? Discuss.

Question 3.6. (4 points)

- a. What kind of suretyship is Grant's suretyship agreement? Discuss.
- b. What defenses, if any, does Grant have in Bank's collection action against him, and how do those defenses affect the amount that may be recovered against him by Bank? Discuss.

Question 3.7. (3 points)

Does Bank's mortgage prime the judicial mortgage of Creditor with respect to the loan advance made by Bank in early March, 2017 after it acquired knowledge of the filing of the judicial mortgage? Discuss.

Question 3.8. (2 points)

Does Creditor have a judicial mortgage on the inventory located on the lot? Discuss.

[End of Question 3]
TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE III
JULY 2017**

QUESTION 4 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Conflict of laws (1), general obligations (3), mortgages (1), sales and exchange (3), suretyship (2)

[End of Question 4]

END OF CIVIL CODE III TEST

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2017**

QUESTION 1 — 40 POINTS

The New Orleans City Council enacted an ordinance requiring payment of an annual tax of \$250.00 by each household in the city with two or more children. The tax applies only to people who have become residents of the city since the effective date of the ordinance. In the ordinance, the City Council states that the purpose of the ordinance is to provide youth recreation and development programs and reimburse the city for additional public school expenses and costs of recreational facilities in the City of New Orleans attributable to new residents.

Henry and Whitney Mills, husband and wife, became residents of the City of New Orleans since the effective date of the tax ordinance. They live alone and have no children, but they have applied for adoption of twins. Henry and Whitney expect the adoption will become complete within a year, and they do not want to pay the annual tax.

Henry and Whitney are interested in challenging the ordinance on constitutional grounds.

- 1.1. Do Henry and Whitney have standing to challenge the ordinance? Discuss.**
- 1.2. Assuming that they have standing, discuss the Equal Protection and Substantive Due Process arguments Henry and Whitney might reasonably make in challenging the ordinance. Will they be successful?**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2017**

QUESTION 2 — 40 POINTS

New Transport Lines is a small bus operator incorporated in Florida. New Transport Lines is licensed to operate in Louisiana, Mississippi and Florida. New Transport Lines has consistently maintained licenses to operate in Louisiana for more than two decades.

A majority of New Transport Lines' revenue comes from groups in Louisiana that travel around Louisiana, and to Mississippi Gulf Coast casinos and also to Disney World in Orlando, Florida. New Transport Lines faces stiff competition from Louisiana-based bus operators for these routes.

In an effort to remain competitive, New Transport Lines recently purchased a new fleet of buses in Florida that replaced older buses that became costly to operate. The new buses complied with all federal standards and regulations but did not come equipped with seat belts for passengers, which were not required by federal standards and regulations.

Two weeks following New Transport Lines' purchase of the new fleet of buses, the Louisiana Legislature enacted a statute that required all buses which operate as common carriers on the highways of Louisiana be equipped with seat belts for passengers. There were no hearings on the legislation. Buses which were purchased a month or more before enactment of the statute, and buses operated by Louisiana corporations, were exempt from the requirement. Bus operators in violation of the statute are fined \$1,000.00 and prohibited from operating within the state of Louisiana for a period of one year following eventual compliance with the statute. In addition, failure to comply with the statute could result in revocation of licenses to operate in Louisiana. The stated purpose of the statute was to provide for the health, safety and welfare of passengers on buses that travel Louisiana highways.

New Transport Lines' first notice of the statute was when one of its drivers was pulled over in Louisiana and issued a summons to appear in court and fined \$1,000.00 for operating a bus without seat belts for passengers. The owners of New Transport Lines fear that imposition of the fine and requiring them to incur substantial costs to comply with the statute, coupled with a prohibition from operating in Louisiana for one year following compliance, will be financially devastating. More importantly, they fear New Transport Lines' license to operate in Louisiana may be revoked.

- 2.1. What arguments might New Transport Lines make to challenge the constitutionality of the statute as it relates to New Transport Lines, and is it likely to be successful? Discuss. Do not discuss Standing, Takings, the Supremacy Clause or Preemption.**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2017**

QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Article III (1), due process (1), equal protection (1), federalism (1), First Amendment (3),
Fourteenth Amendment (1), interstate commerce (1), takings clause (1)

[End of Question 3]

END OF CONSTITUTIONAL LAW TEST

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2017**

QUESTION 1 — 44 POINTS TOTAL

Jason and Nick, needing money, decided that Brad would be a good target. Brad was a well-known local drug dealer whom Jason and Nick knew would have money and drugs in his house. To get a vehicle, Jason and Nick called their friend Adam and told him they needed to borrow his vehicle to go to the store. Adam agreed. So, Jason and Nick walked to Adam's house, got in Adam's vehicle, and drove to Brad's house. Once Jason and Nick were on the street outside of Brad's house, they put on ski-masks, armed themselves with pistols and proceeded up the driveway to the front door. Jason and Nick then kicked in the front door where they found Brad and several of his friends in the living room smoking marijuana. With their guns raised, Jason and Nick ordered Brad and all of his friends to get on the ground. Jason and Nick then began to search Brad and his friends, taking whatever cash and marijuana each of them had on their person.

Unbeknownst to Jason and Nick, Brad's girlfriend, Angela, was in the back bedroom and had by now found Brad's assault rifle. Angela ran down the hallway into the living room and began firing at Nick and Jason, who both immediately returned fire and dashed toward the front door. They missed Angela, but damaged Brad's ceiling, walls and furniture. Jason escaped through the front door and made it back to the vehicle. But during the exchange of gunfire, a ricochet bullet from Jason's gun struck Nick, who died before escaping Brad's house.

QUESTION 1.1.

With what crimes, if any, might Jason reasonably be charged under the Louisiana Criminal Code (Title 14 of the Louisiana Revised Statutes)? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2017**

QUESTION 2 — 36 POINTS TOTAL (12 POINTS EACH SUBPART)

Question 2 is a continuation of the facts from Question 1.

Jason fled the scene in Adam's vehicle and drove back to Adam's house. He then told Adam everything that had just happened. In response, Adam told Jason to leave immediately and told Jason he would never let Jason use his car again.

The next morning two police officers arrived at Adam's house, and Adam greeted them at the door. The officers informed Adam that his vehicle was seen leaving the scene of a suspected crime the night before. As such, the officers informed Adam that they wished to search the vehicle and requested he consent to same. Adam first strongly refused the officers and told them that they needed to go and get a warrant. However, after the police officers threatened to arrest him, take him to jail, and book him on a murder charge if he did not consent, he relented and gave the officers permission to search. As a result of the search, the officers located a firearm inside of the vehicle. They seized the firearm as evidence.

At that point, the officers placed Adam in handcuffs and transported him back to the station. Once back at the station, the officers brought Adam to an interrogation room and again insisted that he speak to them. Adam reluctantly agreed only because he thought the police officers would make good on their previous threat to book him on a murder charge if he did not agree to speak with them. Adam told the officers everything Jason told him about what happened the night before and explained that he had no idea Jason was going to Brad's house. Adam explained that he agreed to allow Jason and Nick to use his vehicle only because he thought they were using the vehicle to go to the store. Adam also told the officers that he believed that the gun they had found in his vehicle must have been the one Jason had used the night before. Finding Adam credible, the officers immediately released Adam but told him they would have to keep the gun as evidence. Adam agreed and left the police station.

Thereafter, based on the information provided to them by Adam, the officers typed up an arrest warrant for Jason, had it signed by a judge and arrested Jason at his place of employment. During the arrest, they also seized Jason's cell phone. While they were driving Jason to the local jail, one of the officers began fiddling with Jason's cell phone and uncovered a text message where Jason was bragging to a friend about his plans to go and rob Brad at his house. At the jail, Jason was then booked on various charges, including for possession of a firearm by a convicted felon.

QUESTION 2.1.

What state and/or federal constitutional bases, if any, does Jason have to seek suppression of Adam's statements to the police? Discuss.

QUESTION 2.2.

Police officers subsequently determined that the firearm seized from Adam's vehicle had been stolen. Prosecutors decided to charge Adam with possession of the stolen firearm. What state and/or federal constitutional bases, if any, does Adam have to challenge the search and seizure of the firearm from his vehicle? Discuss.

QUESTION 2.3.

What state and/or federal constitutional bases, if any, does Jason have to challenge the admissibility of the text messages from his cell phone? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2017**

QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Evidence (4), pretrial procedure (4), trial (2)

[End of Question 3]

END OF CRIMINAL LAW, PROCEDURE AND EVIDENCE TEST

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEEDURE
JULY 2017**

QUESTION 1 – 40 POINTS

Louis, who has always lived in Louisiana, wanted a swimming pool for his home. After interviewing numerous contractors, he hired Perfect Pools, LLC (Perfect Pools) to build his pool. Perfect Pools is a Louisiana limited liability company with two members: Water Heater, Inc. (Water Heater) and Smart Investments, L.P. (Smart Investments).

Water Heater is a corporation organized in Delaware and is the managing member of Perfect Pools. All of Water Heater's shares are owned by Fred, who lives in Florida. Water Heater has offices in Louisiana and Alabama and also has a single large manufacturing facility in Louisiana, but its four senior vice presidents who oversee all daily operations are all in its office in Mobile, Alabama.

Smart Investments is a limited partnership organized under Louisiana law; its sole office is in Louisiana. Its general partner is Money Makers, LLC (Money Makers), a Louisiana limited liability company, whose sole member is Gabe, who lives in Georgia. The sole limited partner of Money Makers is Georgia Peach, Inc. (Georgia Peach) a Georgia corporation with its principal place of business in Georgia.

Perfect Pools completed Louis' pool in December 2015. Despite the cold weather, Louis wanted to use his new pool right away, so he turned on the pool's heater. But as soon as Louis powered on the heater, it exploded, severely injuring Louis. Louis experienced serious pain and suffering over a year during his recovery. Also, Louis has been unable to work since the explosion; his annual salary at the job he held at the time of the explosion had been \$60,000.

Following the accident, Louis moved in with his girlfriend in Georgia so that she could look after him during his recovery. Louis asked his neighbor to watch his home while he was away. Although Louis has enjoyed seeing his girlfriend every day, he misses his friends in Louisiana and does not think he will stay in Georgia.

Meanwhile, on January 4, 2016, Louis filed a petition against Perfect Pools in state court in Mobile, Alabama. His petition did not demand a particular amount of damages and offered no greater description of his injuries than to state that he "sustained physical injuries as a result of the explosion." Perfect Pools was served later in January 2016.

Perfect Pools propounded discovery on Louis to learn the details about Louis' injuries, but Louis requested several extensions of time and said in answers to interrogatories only that he had suffered skin damage for which he continued to receive treatment. On February 1, 2017, Louis finally produced his medical records to Perfect Pools and also sent a settlement demand for \$375,000. The records showed that Louis suffered severe burns and damage to his eyes and that his treating physician told him soon after the accident that he would need expensive surgery and lengthy rehabilitation. Perfect Pools, receiving this first indication that the amount in controversy would support removal, removed the case to federal court later that month.

Answer the following questions; a correct answer without an explanation or discussion will not be awarded any points.

- 1.1. Does the federal court have subject matter jurisdiction over Louis' lawsuit? Discuss. (15 points)**
- 1.2. (a) Describe in detail the procedure Perfect Pools was required to follow to remove the lawsuit to federal court. (b) To which federal court may the lawsuit be removed? (5 points)**
- 1.3. (a) What objections might Louis raise to the removal, and what must he file to seek a return of the lawsuit to state court? (b) What time limits, if any, does he face? (10 points)**

TEST CONTINUES ON NEXT PAGE

FOR QUESTION 1.4, ASSUME THE FOLLOWING ADDITIONAL FACTS:

Louis never filed any motion or other filing relating to Perfect Pools' notice of removal. Promptly after the removal, Louis served Perfect Pools with a request for production of documents that asked for "all correspondence, emails, or business records of any kind that reference or are related to the heater installed by Perfect Pools." Perfect Pools' risk manager, Roger, then met with Perfect Pools' attorney to discuss Louis' discovery request. The attorney asked Roger to gather up all paperwork and records that Perfect Pools had related to the pool heater. Roger thereafter delivered to the attorney various business records, along with a letter in which he explained what was included in the business records and why he believed Perfect Pools did not properly install the heater.

- 1.4. In response to Louis' request for document production, must Perfect Pools produce either (1) the letter from Roger or (2) the business records Roger delivered to Perfect Pools' attorney? Discuss. (5 points)**

FOR QUESTION 1.5, ASSUME THE FOLLOWING ADDITIONAL FACTS:

Water Heater's president, Fred, moved from Florida to Louisiana earlier this year. Water Heater also has recently moved its four vice presidents to Louisiana and closed its Alabama office. Thus, Perfect Pools' attorney just filed a motion to dismiss the lawsuit for lack of subject matter jurisdiction on grounds that Louis and Perfect Pools are now non-diverse.

- 1.5. Should the court grant Perfect Pools' motion to dismiss? Discuss. (5 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEEDURE
JULY 2017**

QUESTION 2 – 40 POINTS

In 2015, Paul, a Louisiana citizen, started a health-conscious, prepared-meals service that guaranteed that its meals would contain organic ingredients only. Until the lawsuit described below, Paul always bought his vegetables from Dean, a Wyoming citizen. The two never spoke to one another, and their transactions were done entirely online. Dean has long sold his vegetables to customers in all fifty states, with no particular focus on any state. For many years, Dean has also advertised his organic vegetables business in national food and health publications.

Last year, Paul purchased an order of spinach from Dean to complete several meals for a customer in Louisiana. Two days after the customer ate the meal containing the spinach, the customer became severely ill with food poisoning. The customer remained in the hospital for over a week and suffered damage to his kidneys. The customer ascertained that the spinach contained a type of fertilizer used to increase its shelf-life. The customer's injuries were caused by an adverse reaction to the fertilizer.

The customer immediately settled his claim against Paul for \$200,000 with an arrangement that allowed Paul to pursue the customer's claim directly against Dean. Paul filed a complaint against Dean in Louisiana federal court based on diversity jurisdiction; he alleged that Dean was responsible to reimburse Paul for Paul's \$200,000 payment to his customer and was also liable for additional damages to Paul for falsely advertising the spinach as "organic."

Paul had a \$10,000 insurance policy to insure against claims for injuries such as what Paul's customer suffered. The insurance company reimbursed Paul for the full policy limits of \$10,000 and, immediately after Paul filed his complaint and with leave of court, the insurance company filed a complaint of intervention in the lawsuit against Dean to recover the \$10,000 it had paid to Paul. The insurance company is organized, and has its only office, in Louisiana.

Dean lived in Louisiana from 2000 to 2010 before he moved to Wyoming to start his vegetable business. He still visits relatives in Louisiana about twice per year for holidays and has attended an annual week-long vegetable seminar in Louisiana the last four years. Dean has informed his relatives on multiple occasions that he plans to retire in New Orleans in a few years.

Dean's lawyer promptly learned that the fertilizer used on the spinach Dean sold to Paul was approved by the federal Food and Drug Administration (FDA) and that, under relevant FDA regulations, a farmer may assert that a product is organic if the fertilizer used is FDA approved.

Dean's lawyer filed two motions to dismiss at the same time: (1) a motion to dismiss Paul's entire complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) on grounds that Dean's assertions about his products being organic complied with the FDA regulations, and (2) a motion to dismiss for lack of personal jurisdiction over Dean. The federal court denied both motions. A week later, Dean filed an answer. No party has yet filed a demand for a jury trial.

Answer the following questions; a correct answer without an explanation or discussion will not be awarded any points.

- 2.1. Does the federal court have subject-matter jurisdiction over the insurer's complaint of intervention? Discuss. (5 points)**
- 2.2. Did the court properly deny Dean's motion to dismiss for lack of personal jurisdiction? Discuss whether it had general personal jurisdiction over Dean and also whether it had specific personal jurisdiction over Dean. (10 points)**

TEST CONTINUES ON NEXT PAGE

- 2.3. Did the court properly deny Dean’s motion to dismiss for failure to state a claim upon which relief can be granted under FRCP (12)(b)(6)? What legal standard was the court required to apply when assessing that motion? (5 points)**
- 2.4. What steps might Paul take to be guaranteed the right to a trial by jury over Dean’s objection? What time limits, if any, apply to such steps? Discuss. (5 points)**

ASSUME THE FOLLOWING ADDITIONAL FACTS FOR QUESTIONS 2.5 TO 2.7:

The court tried the case before a jury with the consent of all parties.

On Monday, April 10, 2017, after Paul and insurer rested their case before the jury, Dean orally moved for a judgment as a matter of law against Paul and the insurer. That same day, the federal court denied Dean’s motion. On Wednesday, April 12, 2017, the jury returned a verdict that Dean was not liable. On Friday, April 14, 2017, the court entered a final judgment dismissing all claims of Paul and the insurer. On Monday, May 1, 2017, Paul filed a motion for a new trial. On Tuesday, May 16, 2017, the insurer filed a motion for new trial. On Thursday, May 18, 2017, the court entered an order denying Paul’s motion. On Tuesday, May 30, 2017, the court entered an order denying the insurer’s motion.

- 2.5. What legal standard was the court to apply when assessing Dean’s motion for a judgment as a matter of law against Paul and the insurer? Discuss. (5 points)**
- 2.6. What legal standard was the court to apply when assessing Paul’s motion for new trial? Discuss. (5 points)**
- 2.7. What is the latest time for Paul to file a timely notice of appeal? What is the latest time for the insurer to file a timely notice of appeal? Discuss. (5 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEUDRE
JULY 2017**

QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Appeals (1), Eleventh Amendment (1), interpleader (1), joinder (1), judgments (1), removal (1), Rule 11 (2), subject matter jurisdiction (1), venue (1)

[End of Question 3]

END OF FEDERAL JURISDICTION AND PROCEDURE TEST

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2017**

QUESTION 1 — 40 POINTS

- 1.1. 4 pts.** When a lawyer signs a pleading filed for a client, what does the lawyer certify personally?
- 1.2. 4 pts.** What are the pleadings to which the lawyer's certification applies?
- 1.3. 3 pts.** What obligations does an attorney have as an officer of the court?
- 1.4. 4 pts.** A lawyer's signature on a discovery response constitutes a certification by the lawyer of what?
- 1.5. 4 pts.** During a discovery deposition, under what circumstances may a party instruct a deponent not to answer a question?
- 1.6. 2 pts.** What is the deadline, if any, to serve upon an adverse party an offer of judgment?
- 1.7. 4 pts.** What are the only documents that may be filed in support of, or in opposition to, a Motion for Summary Judgment?
- 1.8. 5 pts.** Plaintiff was injured when the vehicle he was operating was rear-ended by a truck operated by Driver and owned by Company. Driver was acting within the course and scope of his employment with Company at the time of the collision. The collision occurred in Calcasieu Parish. Plaintiff is domiciled in Allen Parish. Driver is domiciled in Tensas Parish. Company is a Utah corporation but is qualified to do business in Louisiana through the Secretary of State, designating Lincoln Parish as its principal business establishment in its application to do business. It has appointed a registered agent and has a Louisiana office, both located in Lincoln Parish.
- (a) What parish or parishes would be a proper venue for Plaintiff's lawsuit against Driver and Company? **(4 pts.)**
- (b) Plaintiff served discovery (interrogatories and requests for production of documents) on Driver with the citation and petition. Within what period of time from service of citation and petition must Driver respond to this discovery? **(1 pt.)**
- 1.9. 1 pt.** Plaintiff knows that his former accountant has documents and records that are very helpful to establish damages in his case. However, the accountant refuses to give the documents to Plaintiff. The accountant is not someone from whom testimony would be needed. All Plaintiff wants are accountant's records. What can plaintiff do to obtain the records of the accountant without taking the accountant's testimony?

TEST CONTINUES ON NEXT PAGE

- 1.10. 9 pts.** Plaintiff served Company with a set of interrogatories and requests for production of documents. Company has a box of potentially responsive documents.
- (a) What responsibility, if any, does Company have to organize and label the responsive documents to correspond to the specific categories of the request for production of documents? **(3 pts.)**
 - (b) In reviewing the box of documents and discovery requests, Company determined that the answers to the bulk of the interrogatories are set forth in the specific documents that are responsive to the requests for production of documents. Does this determination provide Company with any additional option in responding to the interrogatories? Explain briefly. **(3 pts.)**
 - (c) During the course of Company's review of the documents, Company discovered numerous pre-lawsuit emails among non-lawyer upper level management employees discussing possible strategies and other issues that may arise in the event of a suit, similar to the suit filed by Plaintiff.
 - (i) Are these pre-lawsuit emails by non-lawyer employees of Company subject to production? Explain briefly. **(1 pt.)**
 - (ii) Company decided not to produce the pre-lawsuit emails. How should Company respond to the document request as to the pre-lawsuit emails? Explain briefly. **(2 pts.)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2017**

QUESTION 2 — 40 POINTS

- 2.1. 2 pts.** Trial is by jury. Defendant believes that a third party not sued by Plaintiff caused or contributed to the accident. Defendant wants the jury to measure the fault of the third party so as to reduce any award to Plaintiff against Defendant, without naming third party as a party to the suit. What must Defendant do in pleadings and at trial to accomplish that?
- 2.2. 4 pts.** Plaintiff believes Defendant Corporation has relevant and admissible information on several matters that are necessary to support Plaintiff's claims. However, Plaintiff does not know which of Corporation's officials would be most likely to have knowledge of these subjects.
- (a) What action can Plaintiff take to obtain the deposition of these officials without knowing their identities? **(2 pts.)**
- (b) What must Corporation do to comply with this action? **(2 pts.)**
- 2.3. 2 pts.** When may a deposition be taken by telephone or other remote electronic means?
- 2.4. 5 pts.** Defendant failed to respond to discovery requests propounded by Plaintiff. Plaintiff filed a motion to compel discovery. After a hearing on the motion, the judge ordered Defendant to respond to the discovery request within 15 days. Defendant has still failed to respond to the discovery request.
- (a) What action should Plaintiff take? **(1 pt.)**
- (b) What actions may the judge order in response? Describe any four actions for full credit. **(4 pts.)**
- 2.5. 1 pt.** Plaintiff sued Defendant for personal injuries arising from a motor vehicle accident. At the beginning of the litigation, Plaintiff's counsel propounded interrogatories asking Defendant to identify all witnesses to the accident, and Defendant timely and accurately answered these interrogatories. Two weeks before trial, Defendant learned of a new, previously unidentified witness who observed the accident. Defendant does not want to call this witness at trial, since the testimony will be adverse to Defendant's interests.
- What responsibility, if any, does Defendant have to divulge the identity of this new witness to Plaintiff's counsel?
- 2.6. 6 pts.** Following the jury's verdict in favor of Plaintiff, Defendant timely filed motions for a new trial and for judgment notwithstanding the verdict.
- (a) What are three possible grounds upon which the judge should grant a new trial? **(3 pts.)**
- (b) What are the standards that the judge should use in analyzing the jury's verdict in order to determine the availability of a judgment notwithstanding the verdict? **(3 pts.)**

TEST CONTINUES ON NEXT PAGE

- 2.7. 3 pts.** Plaintiff sued Defendant, the manufacturer of a product alleged to be the cause of Plaintiff's injuries from an accident in Louisiana. Defendant filed a declinatory exception asserting that the court lacked personal jurisdiction over Defendant. The exception contained affidavits of Defendant's officers and attached verified business records that show that Defendant is a corporation organized under the laws of India, has offices and manufacturing facilities only in Japan, has no offices or employees in Louisiana or elsewhere in the United States, and has not sold any of its products in Louisiana. Defendant's supporting affidavits and business records show that some of its products that are exported from Japan are sold to an importer in New Jersey, who is permitted in a written agreement with Defendant to sell and distribute the products throughout the United States, Canada, and Mexico. Defendant's records also show that the importer has sold the products in 22 U.S. states through several regional distributors, one of which is located in Texas and another of which is located in Arkansas. Defendant's product alleged to have caused Plaintiff's injuries came from the Texas distributor who ordered it from the New Jersey importer who had it shipped to Texas from Japan through the Port of Houston.

What rules should the court follow in deciding the exception? How do the rules apply to the facts of this case?

- 2.8. 6 pts.** Brother and Sister have inherited a 160-acre parcel in Calcasieu Parish. The property is more or less square in shape, consists of pasture and is bounded on the entire southern border by a public road. Brother lives in Allen Parish; Sister lives in Lincoln Parish.

They no longer wish to own the property together but cannot agree either to sell the property to a third party or for one of them to sell his or her interest in the property to the other.

What judicial action is available to Sister to force a disposition of the property? What, if any, venue issues may be presented? What will be the likely outcome of the action?

- 2.9. 5 pts.** Landlord owns a house that she rents out on a monthly basis to Tenant under an oral lease. Tenant has not paid rent for two consecutive months.

- (a) What can Landlord do to reclaim possession of this house? **(2 pts.)**
- (b) Landlord has now received a Judgment from the Court which orders the tenant evicted. Tenant was served with the Judgment. However, the tenant has refused to move out. What is the next step to gain possession of the house? **(3 pts.)**

- 2.10. 4 pts.** Client's elderly mother lives in the family home in Lincoln Parish and has become

quite ill. Her illness affects both her mental competency and her physical ability to care for herself and her financial affairs. Client has no legal authority to provide for her mother's personal care and for her financial affairs. Client seeks authority to do both. Client lives in Caddo Parish.

- (a) What action should Client take to gain such authority and where must such action be taken? **(2 pts.)**
- (b) Client filed the necessary filings and a hearing has been set. Although the Sheriff personally served the mother, she made no appearance and no one appeared for her. What step should now be taken to advance the action? **(2 pts.)**

TEST CONTINUES ON NEXT PAGE

- 2.11. 2 pts.** Plaintiff sued Defendant to collect money damages. The trial has begun, witnesses have testified, and Plaintiff has rested.

Defendant then called a witness never previously identified, nor had the existence of such witness ever been made known to Plaintiff from the discovery in the case. In addition, before trial, the judge issued a pre-trial order which specifically provided that no witnesses not made known to the other party may testify at trial unless a motion is made for such permission to present the new witness, and the judge finds that there is extraordinary cause for the introduction of such witness. Plaintiff objected to the witness and moved the judge to exclude the witness from testifying. Defendant responded that he simply forgot to list this witness or make the existence of such witness known to Plaintiff.

The judge, without discussion or reasons, ruled that the witness may testify. He ordered the trial to resume in two days.

What can Plaintiff do to further object to the witness and prevent the witness from testifying?

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2017**

QUESTION 3 — 20 POINTS

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Exceptions (1), post-trial (2), recusal (1), successions (2), trial (2), venue (2)

[End of Question 3]

END OF LOUISIANA CODE OF CIVIL PROCEDURE TEST

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2017**

QUESTION 1 — 40 POINTS TOTAL

Oil and Gas Co. (Oil and Gas) purchased land to drill a gas well. The well is immediately adjacent to land owned by the Good Times Casino (Casino).

Although Oil and Gas did the actual drilling of the well, the well was designed by Drilling Consultant Co. (Consultant). Consultant knew that a blowout was possible and included blowout preventers in its design.

Peter was an employee of Consultant. Peter was on site as the well was being drilled.

While Oil and Gas was drilling the well, there was a blowout and the gas caught fire. The drilling rig burned to the ground. Peter suffered serious burns in the fire. After an investigation, it was determined that the blowout was mainly caused by an improper well design, although drilling operator error may have contributed to the blowout.

The fire spread and burned Casino to the ground. Mr. High Roller, an out of state resident, was furious because he was unable to gamble at Casino until it could be rebuilt.

For each of the following, what type of action might reasonably be asserted and under what theory or theories of tort liability? What defenses, if any, can reasonably be raised in each action? Which party is likely to prevail in each action?

- 1.1. Oil and Gas v. Consultant. Discuss.**
- 1.2. Peter v. Oil and Gas. Discuss.**
- 1.3. Peter v. Consultant. Discuss.**
- 1.4. Casino v. Oil and Gas. Discuss.**
- 1.5. Mr. High Roller v. Oil and Gas. Discuss.**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2017**

QUESTION 2 — 40 POINTS TOTAL

Main Street is lined with buildings that share common walls. Depot Co. (Depot) was building a store on Main Street. Depot's new store had a common brick wall that was originally constructed by, and is still owned by, Neighbor Co. (Neighbor).

While building its store, Depot discovered that the common brick wall that it shared with Neighbor was not properly supported and was in danger of falling. To repair the wall, Depot would have to access the property on the Neighbor side and possibly disrupt Neighbor's business. Depot informed Neighbor of the danger. However, neither Depot nor Neighbor did anything about the wall.

The bricks in the common brick wall were manufactured by Acme Brick Co. (Acme). The bricks were guaranteed to last for 50 years. The bricks in the common brick wall were installed 45 years ago.

The bricks in the common wall between Depot and Neighbor crumbled just as Pam was walking down Main Street. The crumbling brick wall instantly killed Pam. Pam is survived by her husband, Steve and her niece, Nancy.

After Pam's burial, Steve went to the scene, saw the crumbling bricks, and began sobbing. Steve has been in therapy since.

Pam's niece, Nancy, lived with Pam and depended on her for support.

For each of the following, what type of action might reasonably be asserted and under what theory or theories of tort liability? What defenses, if any, can reasonably be raised in each action? Which party is likely to prevail in each action?

- 2.1. Steve v. Acme. Discuss.**
- 2.2. Steve v. Depot. Discuss.**
- 2.3. Steve v. Neighbor. Discuss.**
- 2.4. Nancy v. Any Potential Defendants. Discuss.**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
TORTS
JULY 2017**

QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Conflict of laws (1), intentional torts (4), medical malpractice (1), merchant liability (1), strict liability (1), survival actions (1), workers' compensation (1)

[End of Question 3]

END OF TORTS TEST